United Nations E/C.19/2008/5/Add.5

Economic and Social Council

Distr.: General
12 February 2008
English
Original: Spanish

Permanent Forum on Indigenous Issues
Seventh session
New York, 21 April-2 May 2008
Items 3, 4, 5, 7, 8 and 9 of the provisional agenda*

Special theme: "Climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges"

Implementation of the recommendations on the six mandated areas of the Permanent Forum and on the Millennium Development Goals

Human rights: dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs

Half-day discussion on indigenous languages

Ongoing priorities and themes and follow-up

Future work of the Permanent Forum, including emerging issues

Information received from Governments

Colombia**

Summary

The Colombian State has continued to implement the relevant constitutional provisions and domestic regulations, as well as the international obligations it has undertaken, with a view to preserving the nation's multi-ethnic nature and protecting its ethnic and cultural diversity by means of a differentiated public policy.

* E/C.19/2008/1.
** The present report was submitted late so that the most recent information could be included.

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I. Government efforts towards the Millennium Development Goals and plan of activities of the Office of Ethnic Affairs regarding the goals, objectives and Programme of Action for the Second International Decade of the World's Indigenous People[1]

1. The Colombian Government takes action in response to all international human rights recommendations through its Presidential Programme for Human Rights and International Humanitarian Law. This Programme develops coordination schemes involving, first, the assignment of tasks to different entities, each of which undertakes commitments in relation to the objectives being sought; and second, the conduct of follow-up meetings to assess the results obtained by each entity.

2. The Office of Ethnic Affairs of the Ministry of the Interior and Justice, together with indigenous communities, is designing a public policy framework on indigenous peoples in order to guide the efforts of all State entities in this area. In preparing this draft framework, the Office of Ethnic Affairs, as a policymaking body, takes into account the recommendations of international organizations such as those of the United Nations system and the Organization of American States.

3. The draft is designed to be implemented for all the indigenous peoples of Colombia, although meetings for its preparation, definition and coordination are to be held in Bogotá and in strategic localities in each macroregion.

4. The specific objectives of this project are to:

(a) Systematize existing information (baseline studies, research, life plans, etc.);

(b) Prepare a preliminary baseline study on indigenous peoples' living conditions;

(c) Propose a policy framework based on the problem areas identified in relation to indigenous peoples in each macroregion;

(d) Draw up a proposed public policy framework with indigenous peoples, with the active participation of stakeholders and other interested parties;

(e) Apply the principle of prior consultation in the process of developing a public policy framework with indigenous peoples;

(f) Include, in the next national development plan, the public policy framework agreed upon with indigenous peoples.

5. The thematic areas are as follows: territory, identity, socio-economic issues, autonomy, self-government and participation and prior consultation.

6. While public policy for indigenous peoples must be comprehensive, for methodological reasons its construction, formulation, implementation, evaluation and follow-up must address the above-mentioned thematic areas.

[1] Questions 1 and 8 of the questionnaire are answered in this section, as the information provided relates to both of them.

7. In accordance with the recommendations made at the sixth session of the Permanent Forum on Indigenous Issues, the progress made in the areas of education and culture is described below.

Education

8. The General Education Act establishes affirmative-action measures to increase ethnic minorities' access to education, bearing in mind that article 68 of the Political Constitution of Colombia stipulates that in State educational institutions "no individual may be obliged to receive religious instruction. Members of ethnic groups shall be entitled to an education that respects and develops their cultural identity". The right to education is thus linked to the declaration on the multi-ethnic and multicultural nature of the Colombian nation, with a view to protecting this diversity and affirming its value.

9. In this connection, since the adoption of the 1998-2002 national development plan, ethnic education programmes have been developed with a special emphasis on bilingual and multicultural education, primary education and expansion of the coverage of secondary education through innovative methodologies of relevance to dispersed population groups. In addition, mechanisms for modifying Decree No. 804 of 1995 on ethnic education are being considered. Efforts will be made to ensure that institutions of higher education provide financial assistance to indigenous students, under the coordination of the Ministry of Education and the Ministry of the Interior.

10. The Ministry of Education has implemented and promoted a policy on ethnic education, in application of the standards contained in the Political Constitution of Colombia, particularly in articles 7, 13, 246 and 330, as well as the ordinary and special regulatory framework under Law No. 115 of 1994 and Decree No. 804 of 1995, respectively. Within this regulatory framework the public service of education is regulated to ensure that it fulfils its social function, in line with the needs and interests of the individual, the family and society, while generating the necessary mechanisms for affording the members of the various ethnic groups, in acknowledgement of the country's ethnic and cultural diversity, the opportunity to enter and to remain and advance in the educational system in appropriate conditions of quality, relevance and equity.

11. The 2002-2006 sectoral plan "Education revolution" proposed the implementation of projects to enhance education's relevance for the benefit of the most vulnerable population groups, in order to correct problems of inequity, discrimination or isolation. The plan is based on the idea that ethnic education tailored to each community should be promoted in conjunction with a standard curriculum for all Colombians so as to broaden the dialogue between different bodies of knowledge.

Culture

12. The Ministry of Education and the Ministry of Culture have carried out a series of joint actions aimed at preserving ethnic traditions such as the language or cosmogony of particular groups. Specifically, these actions consisted of:

- The publication of a grammar textbook on the Cofán language for the first to fifth grades, benefiting 3,000 pupils in the indigenous communities of San Miguel and Valle del Guamuez in the Department of Putumayo;
- The design of ethnic education curricula for the first to fifth grades for indigenous communities along the Miriti, Paraná and Middle Caquetá Rivers in Amazonas, covering 19 community schools and 874 pupils, including boys, girls and young people.

13. Also worthy of note is the work of the Caro y Cuervo Institute, a centre for advanced research and cultural and academic training that facilitates and coordinates, together with national and foreign entities, the implementation of plans, programmes and projects in the areas of philology, literature, linguistics and the history of the culture of books and reading. The Institute has an ethnography museum and a department of indigenous linguistics.

14. The department of indigenous linguistics of the Caro y Cuervo Institute was established as a result of Decree No. 786 of 31 March 1944, which promulgated implementing regulations for the law establishing the Institute and provided that one of the latter's functions would be to study the languages and dialects of the aboriginal civilizations of Colombia.

II. Children and youth, women and free, prior and informed consent

A. Indigenous children and youth

15. According to the National Administrative Department of Statistics,[2] the population of minor age numbers 15,184,330, of whom 12,494,045 report that they do not belong to any ethnic group and 638,837 report that they belong to the indigenous population. Of the total number of Colombia's indigenous inhabitants, 46 per cent are of minor age; of the latter, 38 per cent are between the ages of 0 and 5, another 38 per cent between the ages of 6 and 12 and the remaining 24 per cent between the ages of 13 and 17.

16. To benefit indigenous children and adolescents, the current development plan calls for a broadening of the coverage of programmes to support and meet the needs of special population groups such as older persons, persons with disabilities, children and pregnant and lactating women and for the strengthening of indigenous education through the participatory design of ethnic education programmes linked to the educational system to guarantee broader coverage and better quality at the various levels.

17. In 2004 the Colombian Family Welfare Institute, the International Organization for Migration (IOM), the Latin American Human Rights Association and the Office of the Ombudsman, together with a number of civil-society organizations,[3] implemented a project on promotion, prevention and training in the area of human rights, international humanitarian law, collective rights and the

[2] 2005 national census.

[3] The participants included 150 representatives of national and regional indigenous organizations and 33 indigenous administrators, leaders and/or authorities of indigenous peoples.

indigenous legal road map, aimed at spreading awareness of the legal framework of national and international standards for the protection of indigenous peoples' rights and for children under 18 who have been demobilized from illegal armed groups. This project was prompted by the conditions suffered by members of this population group because of political violence and because they belong to indigenous peoples. Emphasis was placed on respect for indigenous authorities' right to decide how to deal with demobilized children and young people,[4] since, in this situation, they must be consulted and supported with a view to protecting such children.

18. With respect to children, Colombia issued Law No. 1098 of 2006, the Children's and Adolescents' Code,[5] to bring Colombian legislation into line with the Convention on the Rights of the Child and other international obligations concerning the protection of children and adolescents. Article 1 of the Code states that its aim is to "(...) ensure the full and harmonious development of children and adolescents by enabling them to grow up in a family and community environment, in an atmosphere of happiness, love and understanding. Their equality and human dignity shall be recognized without discrimination of any kind".

19. Since the country has enhanced its understanding of its ethnic diversity, the Children's and Adolescents' Code provides for the differential recognition of the civil, political, economic and cultural rights of the various ethnic groups populating the nation. From this standpoint, it is envisaged that comprehensive protection should be applied differentially through a public policy that guides current and future decisions in the interests of these communities, taking their specific features into account.

20. In the same vein, article 13 sets out the rights to which children and adolescents belonging to indigenous peoples and other ethnic groups are entitled: "Children and adolescents of indigenous peoples and other ethnic groups shall enjoy the rights enshrined in the Political Constitution, international human rights instruments and the present Code, without prejudice to the principles governing their cultures and forms of social organization".

B. Indigenous women

21. Article 12 of Law No. 1098 of 2006 defines the gender perspective as "(...) the recognition of social, biological and psychological differences in relations between individuals according to their sex, age, ethnic group and the role they play in the family and the social group".

22. In 2005 the Presidential Advisory Office on Gender Equality designed and coordinated the implementation of three workshops and a central meeting of indigenous women, as a means of generating opportunities for dialogue and drawing attention to the importance of the actions taken by indigenous women at the community level. At each workshop, discussions were held on the specific problems

[4] In Colombia, the technical term "*desvinculado*" ("dissociated") is used to describe children who desert or are rescued by law enforcement from illegal armed groups or are handed over to State authorities by such groups.

[5] Colombia, National Congress of the Republic (8 November 2006), Law No. 1098 of 8 November 2006, in Official Gazette No. 46,446 of 8 November 2006 and 46,453 of 15 November 2006, Bogotá.

of the seven participating entities (Guambiano, Arhuaco, Wiwu, Wayuu, Kankuamo, Huitoto and Ticuna) in terms of the needs and experiences of indigenous women in each indigenous community, based on an analysis of political, economic, ideological and social power. Bulletin No. 8 of the Monitoring Centre on Gender Issues, available on the Advisory Office website, documents this process and provides a regulatory, statistical, academic assessment of the current situation of the country's indigenous women.

23. In addition, between May and November 2007, a study on female genital mutilation/cutting (FGM/C) was carried out among the Embera-Chami of Riseralda. The Colombian Family Welfare Institute, the Office of the Ombudsman, the Ministry of the Interior and Justice and the United Nations Population Fund led a process of developing relations with indigenous authorities, with the result that they were able to verify the existence of this practice. Consequently, a project was designed for the transformation of the practice of FGM/C, based on some ideas put forward by the indigenous people themselves. This document was disseminated to other entities and is ready to be discussed with the communities. The United Nations Population Fund included financing for this project in its 2008 budget.

C. Free, prior and informed consent

24. In its judgement No. C-169 of 2001, the Constitutional Court of Colombia held that genuine, representative and participatory democracy can be said to exist only when the formal and material composition of the system adequately reflects the various forces that make up society and enables all of them to participate in the adoption of decisions that concern them.

25. The Colombian State, following the guidelines set out in International Labour Organization (ILO) Convention No. 169, carries out processes of prior consultation as a prerequisite for the implementation of projects, legislative initiatives or administrative acts that have an impact on areas where indigenous peoples are present. The overall aim of prior consultation is to provide an opportunity for participation in which the ethnic groups located in the area of influence of a project, construction work or activity and the company engaged in it can hold a direct dialogue on the potential effects and impacts of these activities and can plan and reach consensus on agreements for mitigating and/or offsetting them.

26. To this end, the law provides for two types of prior consultation, depending on when such consultation is carried out: one type for projects requiring environmental permitting, such as those for extracting or exploiting natural resources, and another type for projects not requiring environmental permitting, such as seismic exploration in the oil and gas sector.

Procedure with permitting

27. This procedure is set out in article 76 of Law No. 99 of 1993, regulated under Decree No. 1320 of 1998 and based primarily on articles 40, 330 and 332 of the Political Constitution of Colombia. The regulations set out in Decree No. 1320 specifically concern consultation with indigenous and black communities for the exploitation of natural resources within their territory.

Procedure without permitting

28. In these cases, prior consultation is governed essentially by Law No. 21 of 1991 (ILO Convention No. 169) and Decree No. 4331 of 2005, which sets out regulations stipulating the powers of the Office of Ethnic Affairs, including the inter-agency coordination of prior consultation processes.

29. This type of consultation does not have a prescribed procedure as such. Accordingly, through a number of experiences in the country that were led by the Office of Ethnic Affairs, a model for consultation has been developed for projects not requiring environmental permitting.

30. Under the terms of Decree No. 1320 of 1998, among the activities and powers of the Office of Ethnic Affairs of the Ministry of the Interior is the certification of the presence of indigenous communities, the participation of indigenous communities in the elaboration of environmental studies and the actual organization of consultation meetings.

III. Obstacles to the implementation of recommendations of the Permanent Forum at its sixth session

31. Compliance with the Colombian State's international and domestic obligations with respect to indigenous people has been jeopardized by the situation of internal violence that has plagued the country for more than four decades. The actions of illegally constituted armed groups have led to the loss of countless lives among indigenous people and have threatened to destroy a number of reservations. Notwithstanding this complex situation, the coordinated and interlinked efforts of State entities, led by the Ministry of Defence, have succeeded in maintaining and protecting indigenous communities through the actions of law enforcement bodies throughout the national territory.

IV. Factors that have facilitated the implementation of the recommendations of the Permanent Forum at its sixth session

32. The fact that the Colombian legal system recognizes, guarantees and ensures the enforceability of the rights of ethnic groups through the establishment of a pluralistic and diverse State facilitates the implementation of recommendations aimed at protecting and promoting the development of indigenous peoples. According to the Inter-American Development Bank's indigenous legislation index, Colombia ranks first in terms of its legislation on cultural rights and indigenous legislation. Section V below demonstrates the progress made with regard to Colombia's indigenous legislation and the way in which this legislative framework facilitates initiatives seeking to promote the development of indigenous peoples.

V. Specific laws and policies to address indigenous issues

33. Colombian legislation targeting indigenous peoples:

Political Constitution: Fundamental rights

Article 1	Colombia is a social State governed by the rule of law, organized as a participatory and pluralistic Republic with autonomous territorial units, and founded upon respect for human dignity and the primacy of the general interest.
Article 2	The goals of the State are to serve the community, promote prosperity, facilitate the participation of all in the decisions that affect them and in the economic, political, administrative and cultural life of the nation, defend national independence, maintain territorial integrity and ensure peaceful coexistence and the enforcement of a just order. (...)
Article 7	The State recognizes and protects the ethnic and cultural diversity of the Colombian nation.
Article 8	The State and individuals have an obligation to protect the cultural and natural wealth of the nation.
Article 10	Establishes that the languages of ethnic groups shall be official in their territories and that the education provided in those territories shall be bilingual.

Rights, guarantees and duties

Article 13	Establishes that all people are free and equal before the law and condemns all forms of discrimination.
Article 17	Prohibits slavery, servitude and human trafficking in all its forms.
Article 18	Guarantees freedom of conscience.
Article 19	Guarantees freedom of worship.
Article 40	Provides for citizen participation in the exercise and control of political power.
Article 63	Describes the communal lands of ethnic groups and reservations as inalienable, imprescriptible and guaranteed against seizure.
Article 67	Establishes that education has a social function to instruct citizens in respect for human rights, peace, democracy, culture, the environment and other disciplines that constitute a good education.
Article 68	Members of ethnic groups shall be entitled to an education that respects and develops their cultural identity.

Article 70	Culture in its diverse manifestations is the basis of nationality. The State recognizes the equality and dignity of all those coexisting in the country.
Article 72	Establishes that the archaeological heritage and other cultural property making up the national identity belong to the nation and are inalienable, imprescriptible and guaranteed against seizure, and provides that the law shall establish mechanisms for recovering such property when it is held by private individuals and the special rights, if any, of ethnic groups that have settled in territories of archaeological wealth.

Inhabitants and territory

Article 96	Grants Colombian nationality by adoption to members of indigenous peoples sharing border territories, applying the principle of reciprocity in accordance with public treaties.

Legislative branch

Article 171	Establishes a special constituency for the election of senators by indigenous communities.
Article 176	The law establishes special constituencies to ensure the representation of ethnic groups, political minorities and Colombians residing abroad in the House of Representatives.
Article 246	The authorities of the indigenous peoples may exercise judicial functions within their territorial boundaries, in accordance with their own laws and procedures, provided that these are not contrary to the Constitution or laws of the Republic. The law shall establish the forms of coordination between this special jurisdiction and the national judicial system.

Territorial organization

Articles 286 and 287	Departments, districts, municipalities and indigenous territories are classified as territorial entities. Territorial entities shall enjoy autonomy with respect to the management of their interests, within the limits established in the Constitution and the law. They shall have the following rights: to govern themselves under their own authorities, to exercise the functions corresponding to them, to administer resources, to establish taxes and to share in national revenue.
Article 329	The establishment of indigenous territorial entities shall be subject to the provisions of the Territorial Organization Act, while their delimitation shall be decided by the national Government, with the participation of representatives of the indigenous communities, and subject to the opinion of the Territorial Organization Commission.

	Reservations are owned collectively and are inalienable.
Article 330	Establishes that the indigenous territories shall be governed by councils formed and regulated according to the traditions and customs of their communities and lists their functions. Also establishes that the exploitation of natural resources in the indigenous territories shall be effected without impairing the cultural, social and economic integrity of indigenous communities and that the Government shall encourage the participation of representatives of the communities concerned in decisions adopted with regard to such exploitation.

Transitional provisions

Transitional article 56	Until such time as the law referred to in article 329 on indigenous territorial entities is issued, the Government may prescribe the necessary fiscal regulations relating to the functioning of indigenous territories and their coordination with the other territorial entities. The Government shall do this within six months, through regulations having the force of law.

Articles 96, 171, 246, 286 and 287, 329, 330 and 361 involve only indigenous communities; the rest apply to all nationals.

Main legislation relating to indigenous territories

Law No. 160 of 1994	Establishing the National System of Agrarian Reform and Peasant Rural Development. With regard to indigenous issues, this law provides for the conduct of studies on the land needs of indigenous communities in order to ensure that they have enough land to settle and develop properly. This is done both through programmes to establish, rehabilitate and expand indigenous reservations on uncultivated land or on property acquired by the State through the Colombian Institute for Agrarian Reform (INCORA), and through the conversion of indigenous reserves into reservations. Furthermore, INCORA shall clarify the ownership of the legal titles of reservations of colonial origin in order to determine whether or not such titles are still in effect and thereby enable work on the restructuring or expansion of such reservations to begin.
Decree No. 2663 of 1994	Implements chapters X and XIV of Law No. 160 of 1994 in respect of procedures for clarifying the ownership of land and reservations.
Decree No. 2164 of 1995 implementing Law No. 160 of 1994	Decree No. 2164 of 1995 partially implements the Agrarian Act with respect to indigenous issues and the procedures to be followed under each programme. In addition, it provides that, as part of the process of establishing reservations, the Office of Ethnic Affairs shall issue a prior opinion based on socio-

	economic, juridical and land tenure studies carried out by INCORA.
Decree No. 1397 of 1996	Establishing the National Commission for Indigenous Territories.

Main legislation relating to education

Law No. 115 of 1994	General Education Act. Chapter III establishes education for ethnic groups and defines the concept of ethnic education as the education provided to groups or communities that enjoy Colombian nationality but possess their own indigenous culture, language, traditions and laws. Such education shall be tailored to their environment and productive, social and cultural processes and shall respect their beliefs and traditions.
Decree No. 804 of 1995	Regulating education for ethnic groups.

Main legislation relating to the environment

Law No. 99 of 1993	Establishing the Ministry of the Environment, reorganizing the public sector responsible for the management and conservation of the environment and renewable natural resources, establishing the National Environmental System and containing other provisions.
Decree No. 1768 of 1994	Reforming the Regional Autonomous Corporations (protection and management of the environment and natural resources).
Decree No. 1791 of 1996	Establishing the regime for the use of forests. Article 42 refers to support for ethnic groups organized as users' associations that are interested in using forests and/or forestry products and require technical and economic assistance in order to use and transform those resources and market the products efficiently.
Decree No. 1320 of 1998	Regulating prior consultation with indigenous and black communities vis-à-vis the exploitation of natural resources within their territory. The aim of such prior consultation is to assess the potential economic, environmental, social and cultural impact on an indigenous or black community, or on its territory, of the exploration and/or exploitation of natural resources within territory that constitutes a reservation or is inhabited on a regular and permanent basis by such communities, and the proposed measures to protect the integrity of the communities living in such areas.

Resolution No. 128 of 2000	Regulating the participation of representatives of indigenous communities in the Autonomous Corporations Governing Council.
Law No. 685 of 2001	Establishing the Mining Code and containing other provisions. One of the key points of this law is its recognition of mining areas for indigenous people and persons of African descent.

Main legislation relating to human rights

Decree No. 1396 of 1996	Establishing the Indigenous Peoples' Human Rights Commission.

Other legislation

Law No. 48 of 1993	Regulating enlistment and mobilization. Under this law, indigenous people residing in their own territory and preserving their cultural, social and economic integrity are exempt from compulsory military service at all times and do not have to pay the compensatory military tax.
Decree No. 1088 of 1993	Allows indigenous councils and/or traditional indigenous authorities, acting on behalf of their respective indigenous territories, to establish associations in the form of public-law entities of a special character.
Law No. 715 of 2001	Establishing basic laws on resources and competencies and containing other provisions aimed at organizing the provision of education and health services, among others. Article 83. Distribution and administration of resources for indigenous reservations. Resources for indigenous reservations shall be distributed in proportion to the share of the population of the indigenous entity or reservation out of the total indigenous population reported by INCORA to the National Statistics Department. Resources allocated to indigenous reservations shall be administered by the municipality in which the indigenous reservation is located. Should the reservation fall under the jurisdiction of more than one municipality, the resources shall be transferred to each municipality in proportion to the indigenous population found therein. However, such resources shall be managed in accounts that are separate from the accounts of territorial entities and, in order for them to be used, a contract shall be drawn up between the territorial entity and the authorities of the reservation, by 31 December each year, specifying how the resources are to be used the following year. A copy of the said contract shall be sent to the Ministry of the Interior by 20 January.

When the reservations have acquired the status of Indigenous Territorial Entities, their authorities shall receive and administer the transfer directly.

The departmental secretariats of planning, or bodies acting in their stead, shall develop training programmes, advisory services and technical assistance for indigenous reservations and municipal authorities, so as to ensure that resources are programmed and used properly.

Law No. 756 of 2002

Royalties Distribution Act.

Article 11 specifies the royalties payable to indigenous reservations that are within five kilometres of hydrocarbon exploitation wells.

Main legislation relating to health

Decree No. 1811 of 1990

Partially implementing Law No. 10 of 1990 in respect of the provision of health services for indigenous communities.

Article 1. The provision of health services for the country's indigenous communities shall henceforth be subject to the provisions of the present Decree.

Article 2. Any programmes and, in general, any health-related actions that are planned for indigenous communities shall first be agreed with those communities and approved by the respective councils or authorities that govern them.

Article 3. Those responsible for formulating and implementing health programmes in indigenous communities shall consult and draw on the research, analyses and studies carried out on the subject and define methodologies aimed at increasing and building on experience in this field.

Article 5.

(e) Indigenous communities that are too small to justify the creation of a post of health advocate and that, owing to particular cultural or linguistic reasons or to distance, are unable to use the services of the health advocate closest to them may ask the local or regional departments of health to train one of their members as a volunteer, whose work shall be governed by the same rules governing that of health advocates under this Decree. The local or regional departments of health may not use the provisions of this subparagraph as a pretext for avoiding either the due remuneration of indigenous health advocates or the responsibility to create health advocate posts whenever circumstances and needs so require.

Law No. 100 of 1993	Health care for the poorest and most vulnerable population shall be subsidized through the General Social Security System for Health. Within this group, persons such as indigenous people shall be given particular importance.
Decree No. 0757 of 1995	Partially regulating matters relating to the Solidarity and Guarantee Fund.
Decree No. 2357 of 1995	Regulating certain aspects of the subsidized regime of the Social Security System for Health. Article 18. Co-payment. This is the sum that the user shall pay to health service providers directly in the following cases: (1) There shall be no co-payment for the poor or indigenous populations.
Decree No. 330 of 2001	Establishing rules for the establishment and functioning of health promotion organizations, composed of indigenous councils and/or traditional indigenous authorities.
Law No. 691 of 2001	Regulating the participation of ethnic groups in the General Social Security System for Health.
Agreement No. 0244 of 2003 of the National Council on Social Security for Health (CNSSS)	Defining the nature and conditions of operation of the subsidized regime of the General Social Security System for Health and containing other provisions.

Other provisions

Law No. 270 of 1996	Statutory Law on the Administration of Justice. Incorporates the authorities of indigenous peoples within the structure of the judicial branch and recognizes the traditions and customs of indigenous peoples (legislative systems) as part of national legislation. Particular attention should be drawn to the following articles of this law, which relate to indigenous issues: Article 11. The judicial branch shall be composed of: 1. The entities belonging to the various jurisdictions (...) (e) Jurisdiction of the Indigenous Communities: Authorities of the indigenous territories. Article 12. Exercise of the jurisdictional function by the judicial branch. The jurisdictional function shall be exercised as a rightful, usual and permanent function of the bodies and individuals with the legal capacity to do so, as stipulated in the Political Constitution and in the present Statutory Law.

	This function shall be exercised by the Constitutional Court, the Supreme Council of the Judiciary, the administrative courts, special jurisdictions such as the special military criminal jurisdiction, the special indigenous jurisdiction and justices of the peace, and the ordinary courts, which shall deal with any matters not specifically attributed to another court by the Constitution or the law.
International conventions	
Law No. 21 of 1991, ratifying ILO Convention No. 169 (1989)	Concerning indigenous and tribal peoples.
Law No. 43 of 1993	Establishing rules relating to nationality. Article 1. In accordance with article 96 of the Political Constitution, the following are Colombian nationals: 2. By adoption: [...] (c) Members of indigenous peoples sharing border territories, applying the principle of reciprocity in accordance with any public treaties concluded or amended for this purpose.
Law No. 145 of 1994	Adopting the Agreement Establishing the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean, signed in Madrid on 24 July 1992.
Law No. 191 of 1995	Containing provisions on border areas. Article 8. The State shall protect the traditional knowledge associated with the genetic resources developed by local and indigenous communities in border areas. Furthermore, the use of such resources shall be subject to the prior consent of such communities and shall include equitable compensation in the form of benefits that strengthen the indigenous peoples.
Decision No. 391 of 1996	Commission of the Cartagena Agreement — Common regime on access to genetic resources. The aims and objectives include establishing conditions for a fair and equitable share of the benefits arising from access, and establishing the basis for the recognition and valuation of genetic resources and their derivatives, as well as of their intangible components, particularly in the case of local, Afro-American or indigenous communities.
International Convention on the Elimination of All Forms of Racial Discrimination	Seeks to eliminate discrimination on the grounds of race.

VI. National institutions responsible for indigenous issues

34. The Colombian State has set up ethnic departments in various entities and has a strong Constitutional Court responsible for monitoring, preventing and punishing discriminatory practices. To that end, four bodies have been given the specific task of preventing all forms of discrimination in the country. The first is the Ministry of Culture, one of whose main objectives is to develop national traditions and culture, combat prejudice and promote inter-ethnic and intracultural understanding, tolerance and friendship among the various groups found in the country.

35. The other three institutions, which are the Office of Ethnic Affairs of the Ministry of the Interior and Justice, the Office of the Procurator-General and the Office of the Ombudsman, have a more specific role in preventing discrimination through the development and implementation of affirmative actions. These institutions act as monitoring bodies.

Ministry of Culture

36. Under Law No. 397 of 1997 (General Culture Act), the Ministry is responsible for developing, coordinating, implementing and monitoring State policy in the area of culture in accordance with development plans and programmes.

37. The Ministry of Culture also chairs the National Council for Culture, which is the supreme body responsible for representing cultural interests. Both members of indigenous communities and members of Afro-descendent communities have obligatory seats on the Council.

38. As the lead agency for central policy and as the body chairing the National Council for Culture, the Ministry of Culture has duties that include safeguarding and protecting the cultural expressions of Colombians and promoting constructive intercultural dialogue that shows respect for difference. It thus plays a leading role in avoiding and preventing discriminatory practices through plans and programmes that demonstrate, extol and promote the country's cultural diversity. Its most important action lines are as follows:

(a) National "Culture and Social Harmony" Plan;

(b) "Señal Colombia" public television channel;

(c) National "Music for Social Harmony" Plan;

(d) Programme for the Protection of National Heritage and Memory;

(e) National Programme of Concerted Action;

(f) National Stimulus Programme;

(g) National Reading and Libraries Plan;

(h) Ethnoculture and Development Programme.

Ministry of the Interior and Justice

39. In Colombia, ethnic policy is coordinated by the Office of Ethnic Affairs, which is a unit within the Ministry of the Interior and Justice. It has two sub-units, one for indigenous affairs and one for the Afro-Colombian, Raizal and Rom communities. All the institutions, entities and units of the executive branch work

with issues and programmes related to ethnic groups. Ethnic policy is not centralized and each territorial entity with an ethnic presence (governor's office, municipality) is responsible for coordinating and implementing programmes in this area.

40. In accordance with article 16 of Decree No. 200 of 2003, the Office of Ethnic Affairs of the Ministry of the Interior and Justice is responsible for carrying out the following activities:

(a) Conducting and publishing studies and research on ethnic groups in coordination with the Office of Legal Codification and entities and organizations working in the area with a view to assessing the potential social, cultural and environmental impact of the various activities on these communities, in accordance with the law;

(b) Promoting the resolution of conflicts based on collective ownership, usufruct and exploitation of land or natural resources and use of traditional production practices in accordance with legal provisions in this area;

(c) Coordinating among institutions the holding of consultations with ethnic groups on projects that might affect them, in accordance with the law;

(d) Keeping a record of indigenous traditional authorities recognized by the respective community, of associations of indigenous authorities, community councils and grass-roots organizations of black communities;

(e) Providing support to the Presidential Advisory Office on Ethnic Diversity for training programmes on ethnic and cultural diversity, public management and areas of interest related to ethnic groups;

(f) Responding to requests and consultations related to matters within its competence;

(g) Supporting the activities of the Ministry's studies centre;

(h) Other duties related to the nature of its work.

41. In the exercise of these duties, the Office of Ethnic Affairs has established the following objectives:

(a) To complete the core catalogue of rights of indigenous and Afro-Colombian peoples and to make headway with legal developments for the Rom and Raizal groups;

(b) To strengthen opportunities for consensus-building and participatory mechanisms of ethnic groups;

(c) To implement the first experiences of the indigenous territorial entities in accordance with the Land-Use Act;

(d) To formulate the specific component on the protection of the individual and collective human rights of ethnic groups within the framework of national human rights policy;

(e) To implement a capacity-building programme for the authorities and governments of ethnic groups, and to promote and support the formulation of a long-term development plan for Afro-Colombian communities;

(f) To assist with completing the process of titling reservations for indigenous communities and collective territories for black communities of the Pacific;

(g) To implement a training programme for public officials on the rights of ethnic groups;

(h) To support departmental territorial entities in their efforts to assume functions and make administrative adjustments to address the needs of ethnic groups.

Office of the Deputy Procurator for Prevention in the Field of Human Rights and Ethnic Affairs

42. In accordance with Decree No. 262 of 2000, the Office of the Deputy Procurator has the following responsibilities in protecting and defending the human rights of ethnic minorities:

(a) To intervene when necessary with the public authorities in accordance with its preventative and oversight role in order to defend the rights of ethnic minorities (article 24);

(b) To ensure compliance with rules and judicial decisions related to the protection of the rights of ethnic minorities and their traditional territories (article 26);

(c) To participate when necessary in administrative and police proceedings in matters of interest to members of ethnic minorities in order to defend the legal order, fundamental rights and guarantees, and the public heritage (article 26);

(d) To initiate collective legal actions, protection and enforcement proceedings and other legal actions to guarantee the defence of the legal order and of fundamental, social, economic, cultural, collective and environmental guarantees and rights, and the rights of ethnic minorities (article 26);

(e) To intervene with the administrative authorities and police and participate in the relevant proceedings to defend the rights of ethnic minorities, workers or pensioners (article 27);

(f) To participate in the civil and agrarian proceedings of the Civil-Agrarian Chamber of the Supreme Court and to intervene when necessary to defend the rights of ethnic minorities (article 31); to participate when necessary in the family proceedings of the Civil-Agrarian Chamber of the Supreme Court in order to defend the rights of ethnic minorities (article 32); to participate when necessary in the labour proceedings of the Labour Chamber of the Supreme Court in order to defend the rights of ethnic minorities (article 33).

Office of the Deputy Ombudsman for Indigenous and Ethnic Minority Affairs

43. The Office of the Deputy Ombudsman for Indigenous and Ethnic Minority Affairs is a division of the Office of the Ombudsman, which is part of the Office of the Attorney-General and is responsible for ensuring the promotion, exercise and dissemination of human rights in accordance with the provisions of articles 282 and 283 of the Political Constitution. In the exercise of its mandate, it established the Office of the Deputy Ombudsman for Indigenous and Ethnic Minority Affairs as a

mechanism for promoting the exercise of the human rights of indigenous peoples and other ethnic minorities and for preventing violations of their rights. Its specific functions are as follows:

(a) To evaluate continuously the human rights situation in the country with respect to indigenous peoples and ethnic minorities;

(b) To advise the Ombudsman on issues related to ethnic minorities and to keep the Ombudsman informed about the status of legislative proposals in this area;

(c) To establish ongoing dialogue with governmental and non-governmental organizations involved in the protection and defence of the human rights of ethnic minorities.

44. In addition to the aforementioned entities, important institutions that contribute to the prevention of discrimination include the Colombian Institute of Anthropology and History, the Caro y Cuervo Institute and the General National Archive and National Library of Colombia. Similarly, the majority of national and local entities have taken actions that recognize the importance of the ethnic variable and have made efforts to quantify, value and adequately protect it.

45. Finally, the Presidential Advisory Office on Ethnic Diversity is due to be strengthened in the coming years. The Office was established at the policy level within the State and there are plans to make it operational.

VII. Regular capacity-building programmes on indigenous issues for national civil servants

46. The School of Public Administration (ESAP) is the specialized Government entity that provides training to civil servants. Using public and international cooperation funds, this entity offers training programmes that enable civil servants to better perform their duties. It also promotes academic activities aimed at guaranteeing the democratization and social control of the administration. In 2003, ESAP developed a certificate programme on indigenous legislation in six areas of the country, including the Departments of La Guajira, Arauca and Huila. The programme was aimed at members of indigenous communities and civil servants.

VIII. Information or suggestions on the special theme of the seventh session of the Permanent Forum: Climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges

47. With respect to the special theme, the Ministry of Foreign Affairs, the Ministry of Trade, the Ministry of the Environment and the Ministry of the Interior and Justice, together with the Humboldt Institute, have participated in discussions within the framework of the Convention on Biological Diversity on the themes of traditional knowledge (article 8 (j)) and access and benefit sharing. Colombia sent a delegation comprising members of the aforementioned ministries to the most recent meeting of the Working Group on article 8 (j) held in Montreal, and will attend the meeting on access and benefit sharing in Geneva. **Colombia respectfully**

recommends that all discussions on traditional knowledge in relation to biodiversity resources, conservation and access to biodiversity resources take into account the progress made within the framework of the Convention in order to avoid parallel discussions and duplication of efforts on the same themes.

48. In addition, the Ministry of the Environment, Housing and Territorial Development and the Office of Ethnic Affairs have been working with indigenous organizations and peoples on the development of consultation mechanisms for natural resources exploration and exploitation. During 2005, the National Hydrocarbon Agency and the National Indigenous Organization of Colombia (ONIC) jointly implemented a project on indigenous peoples' and organizations' view of petroleum policies in Colombia. In 2006, the Agency was provided with resources to carry out other activities with regional and grass-roots organizations aimed at establishing consensus-building to allow for enhanced consultation processes.

49. The 2006-2010 national development plan states that it is essential to support the development of projects implemented by indigenous peoples for the conservation, restoration and sustainable use of natural resources and to strengthen the environmental governance capacity of indigenous authorities by providing training and financing projects.

50. At the same time, efforts are being made to research and implement low-cost rainwater harvesting methods and the use of other natural sources of water in scattered and remote communities through the Regional Autonomous Corporations and other relevant entities.

IX. Information on the Government's promotion of the United Nations Declaration on the Rights of Indigenous Peoples

51. The Colombian Constitution and body of law, as well as the international instruments ratified by Colombia, are consistent with most of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples. However, while the Declaration is not a legally binding norm for the State and in no way constitutes the establishment of conventional or customary provisions that are binding for Colombia, some aspects of the Declaration were found to be in direct contradiction with the Colombian internal legal system, which obliged the Colombian State to abstain in the voting on this text.

52. For example, article 30 of the Declaration provides that effective consultations must be held with indigenous communities prior to using their lands or territories for military activities. Under the mandate set out in Colombia's Constitution, the State security forces must be present throughout the national territory to provide and guarantee to all inhabitants protection of and respect for their lives, honour and property, both individual and collective. Protecting the rights and integrity of indigenous communities depends to a great extent on security in their territories. In that connection, instructions have been issued to the security forces to fulfil their obligation to protect the rights of such communities. Nevertheless, this provision of the Declaration contradicts the principle of the necessity and effectiveness of the

State security forces, preventing the fulfilment of their institutional mission. This is not acceptable to Colombia.

53. Moreover, articles 19 and 32 of the Declaration refer to consultations to obtain the free, prior and informed consent of indigenous communities before approving projects that may affect their lands or territories and other resources. In particular, the development, utilization or exploitation of mineral, water or other resources is mentioned.

54. In that regard, Colombia's Constitutional Court has reiterated in its jurisprudence that there must be compatibility between the exploitation of natural resources and the protection of the social, cultural and economic integrity of indigenous communities. This Court has indicated that, while the Government is obligated to provide effective and reasonable mechanisms for participation, it is not obligated to reach an agreement or consensus. Indigenous peoples' right to consultation is not absolute. Both the Constitutional Court and the ILO Committee of Experts have established that prior consultation does not imply a right to veto State decisions, but that it is a suitable mechanism for enabling indigenous and tribal peoples to exercise the right to express themselves and to influence the decision-making process.

55. Other articles of the Declaration state that indigenous peoples have the right to own, develop and control the territories that they possess by reason of traditional ownership, as well as the underlying natural resources. Other related rights, such as protection against the dispossession of such resources, are also recognized. It is important to stress that many States, including Colombia, constitutionally stipulate that the subsoil and non-renewable natural resources are the property of the State in order to protect and guarantee their public use for the benefit of the entire nation. Therefore, accepting provisions such as those cited above would run counter to the internal legal order, which is based on the national interest.

56. However, the decision to abstain in the voting on this text because of the legal incompatibilities identified does not change the State's firm national commitment to implementing its constitutional provisions, internal norms and international obligations aimed at preserving the Colombian nation's multi-ethnic nature and protecting its ethnic and cultural diversity.